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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/682,541

10/10/2003

Pierre Bernard

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EXAMINER

REIMERS, ANNETTE R

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

05/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

10/682,541

Applicant(s)

BERNARD ET AL.

Examiner

Annette R. Reimers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/10/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Richelsoph (U.S. Patent Number 6,740,086), previously cited by examiner on 892.

Richelsoph discloses various embodiments of an immobilization device for a connecting rod in an osseous anchoring element, e.g. 10<sup>100000</sup>, comprising retention means, 18<sup>100000</sup>, deforming elastically under a pressure force F and a blocking element, e.g. 52, comprising lugs, e.g. 55, which coact with the retaining means to permit the securement of the blocking element on the osseous anchoring element, a tightening screw, (see also column 15, lines 32-35) for permitting the immobilization in rotation and in translation of the connecting rod between the osseous anchoring element and the blocking element (see figure 17).

The osseous anchoring element has a head comprising two truncated vertical walls, delimiting a central opening of U shape whose bottom has a part cylindrical profile, each vertical wall is constituted by a central surface bordered laterally and on

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each side by elastic blades, e.g. 33', separated respectively from said central surface by vertical slots (see column 15, lines 19-24) wherein the elastic blades comprise a snap-in tooth and a blocking element comprising a seat with a screw-threaded bore opening within the seat, a tightening screw coacting with the screw-threaded bore (see also column 15, lines 32-35) and lugs which coact respectively with a tooth secured to the elastic blades (see figure 17).

The head comprises two vertical walls of truncated profile disposed one facing the other and in parallel planes so as to delimit a first central opening of U shape carried by the axis XX' of the connecting rod and whose bottom has a part cylindrical profile, and a second opening perpendicular to the axis XX' and to the first opening (see figure 17). Furthermore, each elastic vertical wall is separated from the bottom of the central opening by a vertical slot giving a certain elasticity to each wall in a YY' direction (see figure 17). In addition, the two perpendicular openings permit delimiting at each point of the head elastic blades adapted pressure force F. Moreover, the pressure force F applied to the blocking element permits by means of lugs and vertical slots, the lateral deformation of the elastic blades in the direction of the central surface of each wall of the osseous anchoring element (see figure 17).

The two lugs form teeth comprising hooking portions separated by a vertical seat bordered laterally by ribs (see figure 17 and column 15, lines 19-24). In addition, the hooking portions are closed opposite the lateral surfaces by means of the corresponding vertical rib (see figure 17 and column 15, lines 19-24). Furthermore, the hooking portion of each lug is positioned retracted and at a certain distance  $d_l$  from the

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lateral and opposite surfaces of the blocking element (see figure 17 and column 15, lines 19-24). Moreover, the distance  $d$  separating the two lugs can be than the distance provided between two teeth a same vertical wall of the osseous anchoring element (see figure 17 and column 15, lines 19-24).

With regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Richelsoph, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*AR*

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER